

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	CC Docket No. 96-45
Federal-State Joint Board on)	
Universal Service)	
Multi-Association Group (MAG) Plan for)	
Regulation of Interstate Services of)	CC Docket No. 00-256
Non-Price Cap Incumbent Local Exchange)	
Carriers and Interexchange Carriers)	

**NATIONAL TELEPHONE COOPERATIVE ASSOCIATION
OPPOSITION AND SUPPORT TO PETITIONS FOR RECONSIDERATION AND
CLARIFICATION**

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**NATIONAL TELEPHONE COOPERATIVE ASSOCIATION
OPPOSITION AND SUPPORT TO PETITIONS FOR RECONSIDERATION AND
CLARIFICATION**

The National Telephone Cooperative Association (NTCA) respectfully submits its opposition to the petition for reconsiderations filed by the Illinois Commerce Commission (ICC) and the Competitive Universal Service Coalition (CUSC), and its support to the petition for reconsideration/clarification filed by Coalition of Rural Telephone Companies (CRTC).¹

NTCA is a non-profit corporation established in 1954. NTCA represents 545 rural incumbent local exchange carriers. Its members are full service telecommunications companies providing local, wireless, cable, Internet, satellite and long distance services to rural communities throughout the United States. All NTCA members are small carriers defined as “rural telephone companies” in the Telecommunications Act of 1996 (Act).

¹ *Fourteenth Report and Order, Twenty-Second Order on Reconsideration (Order), and Further Notice of Proposed Rulemaking (FNPRM), In the Matter of Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 96-45, 00-256, FCC 01-157 (rel. January May 23, 2001).

They are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

I. THE COMMISSION SHOULD DENY THE ILLINIOS COMMERCE COMMISSION'S PETITION FOR RECONSIDERATION

On July 5, 2001, the ICC requested that the Commission reconsider its decision to adopt a new, rural universal service plan largely consistent with the recommendations of the Rural Task Force (Task Force).² NTCA opposes the request. The ICC's petition erroneously asserts that the FCC's adoption of the Task Force plan to re-base the existing rural universal service high cost fund and provide a safety net and safety valve will result in excessive funding and lead to use of excess funds for other than intended purposes. The ICC further contends that the record developed in this proceeding contains no evidence to support the contrary. NTCA submits that the:

- record contains ample evidence that the need for relief from the support caps exists;
- record shows that the recommendation contained adequate provisions to limit a carrier's support so that it would not recover more than 100 percent reimbursement on its incremental loop investment;
- record includes responses to the ICC's and other parties' concerns about excessive funding, and
- ICC's own petition lacks substance and is merely based on conjecture.

Contrary to the ICC's claim that the Commission's decision to increase rural universal service support funding³ rests on an insufficient record with "no empirical

² The FCC agreed with the submission of the Federal-State Joint Board on Universal Service ("Joint Board") that the Rural Task Force is "a good foundation for implementing a rural universal service plan that benefits consumers and provides a stable environment for rural carriers to invest in rural America." *In the Matter of the Federal-State Joint Board on Universal Service, Recommended Decision*, CC Docket 96-45, FCC 00J-4, at para. 1, (rel. December 22, 2000).

³ The increase in funding will occur over a five year period via a re-basing the High Cost Loop ("HCL") fund and establishment of a safety net and safety valve.

evidence” of the need for increased support,⁴ the Task Force recommendation was based on more than two years of work and study. As reported in its third White Paper, the Task Force studied the current state of support funding and obtained data from the National Exchange Carrier Association (NECA) showing that without the imposed cap, the High Cost Fund for rural carriers “would be approximately \$83.9 million higher.⁵ The Rural Task Force studied the characteristics and operation of the current support system as a benchmark for comparison of all other support mechanisms.”⁶

The record also shows that ample evidence exists to support *at least* the fund size recommended by the Task Force and adopted by the FCC. For example, in reply comments filed on November 30, 2001, the Alaska Rural Coalition explained that recent NECA analyses, provided at the Joint Board’s request, concluded that Rural Telephone Companies in Alaska would have received over \$6,540,871.09 more if the funds had not been capped.⁷ The Coalition’s comments further stated:

...rural telephone companies provide NECA with cost data annually. There is no evidence that the data submitted and approved results in either excessive or unwarranted support. Moreover, as the Joint Board well knows, rural telephone companies have not fully recovered their actual costs due to an estimated \$350 million deficiency in the universal service fund since 1997. Although Congress has decreed that universal service support must be ‘sufficient,’ high cost loop support, recovery of corporate operations expense and universal service fund support related to newly acquired exchanges are all currently capped. NECA calculates that the payment shortfalls since the ‘interim’ cap was imposed in 1994 approach 13% of total fund payments. If continued into 2001, NECA estimates that the cap effect will grow to \$198 million, or nearly 18% of full funding.

⁴ ICC Petition at 5.

⁵ In addition to the cap on the growth of the High Cost Fund, there are caps on recovery of corporate operations expense and caps on universal service funds related to newly acquired exchanges. It is estimated that removal of the corporate operations expense cap would increase the fund for Rural Carriers by \$34.5 million, and that removal of the cap on acquired exchanges would increase the fund by \$12.8 million. *Universal Service Fund 1999 Submission*, NECA (Oct. 1, 1999).

⁶ See *Rural Task Force White Paper No. 3: Alternative Mechanisms for Sizing a Universal Service Fund for Rural Telephone Companies*, August 2000, at 9.

⁷ See Reply Comments of the Alaska Rural Coalition, filed November 30, 2000, at 8, n. 15.

Under these circumstances, where rural telephone companies' universal service support is capped and where they are not even recovering their costs, there is ample evidence that the Rural Task Force's recommended resizing of the universal service fund is warranted.⁸

USTA, NRTA, and OPASTCO also directly responded to assertions by the ICC and other parties⁹ "that funding levels may exceed what is required to attain 'sufficiency'." Though some parties citing rural rate data suggested that support is overly generous, the Associations pointed out these comments failed to consider the smaller calling scopes of rural carriers and the increased toll charges customers may incur to make calls that are typically considered local in urban areas. The comments also noted that the Task Force's second White Paper

provides extensive data regarding how the limited local calling scopes of rural telephone companies impel their customers to make more toll calls, resulting in average total (local plus toll) monthly rates for both rural and non-rural consumers that are strikingly similar. This data demonstrates why the low local of some rural telephone companies cannot be interpreted as an indication that support is too generous. In fact, even with the re-based cap on the fund proposed in the *Rural Task Force Recommendation*, it should be noted that support would remain below carriers' costs. Specifically, the *Rural Task Force Recommendation* calls for the cap on the high cost loop fund to be re-based as if the cap had not been in effect for the year 2000, resulting in an increase of \$118.5 million. Yet NECA has established that shortfalls for this year alone run to \$133 million.¹⁰

NTCA repeatedly stated on record that it is patently unlawful for the Commission to treat preventing significant growth of the federal fund over its current level and an independent test of a suitable federal mechanism. NTCA objected to any cap on the fund and urged the Commission to recognize that continuation of the support caps will force relitigation of that issue as change progresses and will force individual carriers to seek

⁸ *Id.* at 8-9.

⁹ See Reply Comments of USTA, NRTA, and OPASTCO November 30, 2000, at 8, n. 31, citing Maine/Vermont Comments at 8-10, New York State Department of Public Service, Connecticut Department of Public Utility Control, Illinois Commerce Commission, and Maryland Public Service Commission Comments (New York *et al.* Comments) at 2-4.

costly administrative waivers to meet customer needs¹¹ The cap truly “prevents rural carriers from obtaining all the support for which they qualify, contrary to the Act’s mandate that support be sufficient.”¹²

In addition to comments addressing the ICC’s complaint that the fund may be “too generous,” many parties concurred that the Task Force Recommendation provided adequate provisions to limit a carrier’s support, so that it would not recover more than 100 percent reimbursement on its incremental loop investment. Indeed, the total payment to a carrier under the new plan will always be less than the High Cost Loop Fund support that would have been paid in the absence of a cap, so it will never exceed 100 percent reimbursement on a rural carrier’s incremental loop investment.¹³

Finally, though the ICC’s petition labels the Commission’s universal service fund “excessive,” the ICC itself fails provide substantive arguments to support that claim. Pervasive throughout the text of the petition is the phrase “likely to” along with words “may” and “could.” These are not words of supportive documentation but rather appear

¹⁰ *Id.* at 8-9. *See also*, Comments of the Associations at 6-7.

¹¹ NTCA Comments, November 3, 2000, at 7-8. *See also*, NTCA Comments, February 26, 2001, at 3, n.8, and 14 n. 32.

¹² Comments of NRTA and OPASTCO, February 26, 2001, at 6. *See also* Comments of John Staurulakis, Inc., February 26, 2001, at 6: “The existing caps and proposed RTF modifications to caps and limitations on High Cost Loop (“HCL”) support impede sufficient support and should be eliminated.” NTCA and others parties objecting to the universal service support caps also questioned the recommended safety net and safety valve, arguing that they should go further to provide predictable and sufficient support. *See*, for example, NTCA comments, November 3, 2000, at 8.

¹³ Comments of Interstate Telcom Group, February 26, 2000 at 6-7. Interstate illustrated its point with an example: “assume that the proposed cap on the modified High Cost Loop fund was triggered for 2003. Assume farther that ILEC A met the 14% TPIS growth criterion, that ILEC A would have received High Cost Loop Fund support in the amount of \$1,500,000 if the cap had not been triggered (uncapped amount), and that ILEC A would receive \$1,400,000 under the cap (capped expense adjustment). The application of the safety net additive mechanism means that ILEC A would receive 50 percent of the difference between the \$1,400,000 capped expense adjustment and the \$1,500,000 uncapped amount. This additional \$50,000 ‘safety net additive’ would be paid to ILEC A in addition to its capped \$1,400,000 High Cost Loop Fund support for the year, for total support of \$1,450,000.” *See also*, Comments of NRTA, OPASTCO, and USTA, February 26, 2001, at 6.

to be words of unfounded concern from a net contributor state. The ICC's mere conjecture of what might occur is based solely on a condition of excess for which the ICC itself can provide no evidence of fact.

II. THE COMMISSION SHOULD DENY THE PETITION FOR RECONSIDERATION FILED BY THE COMPETITIVE UNIVERSAL SERVICE COALITION

CUSC requests that the Commission amend its new disaggregation rules. Specifically, CUSC recommends: (1) that whenever a rural ILEC study area is disaggregated into separate sub-zones, the study area should automatically be disaggregated for purposes of eligible telecommunications carrier (ETC) designation as well; (2) incumbent local exchange carriers (ILECs) should not be allowed to "opt out" of disaggregation (Path 1), if another party objects, and the Commission should require mandatory wire center disaggregation no later than six months after a competitor applies for it; and (3) the FCC must adopt strict and specific rules governing how the amounts of funding in each sub-zone are calculated under Path 3, self-certification, to ensure amounts are cost justified.¹⁴ The Commission should reject all three recommendations.

First, section 214(e) requires competing carriers seeking ETC designation in an ILEC study area to provide service to the entire study area, not portions of it.¹⁵ CUSC recommendation to disaggregate an ILEC's study for purposes of ETC designation would therefore be a violation of section 214(e) and an invitation for competitors to cherry pick customers in the incumbent's study area. Section 214 requires a competitor to service the entire study area so that all customers, business and residential, have the opportunity to choose service from more than one competing eligible telecommunications carrier.

¹⁴ Petition for Reconsideration filed by the Competitive Universal Service Coalition, CC Docket Nos. 96-45 and 00-256. pp. 7-11 (July 5, 2001).

Enforcing section 214 ensures that all customers within a rural study may receive the benefits of competition and universal service support.

Second, CUSC request to require mandatory wire-center disaggregation ignores the economic and competitive reality that many small carriers face in rural America. For carriers serving very small and remote customer bases, disaggregation may make no economic sense. In these cases, the cost studies involved and regulatory filings required as a result of mandatory disaggregation may increase a carrier's overall costs without providing any corresponding benefits to the incumbent or the competitor. Mandatory disaggregation at a competitor's discretion therefore should be rejected.

Third, CUSC request that the FCC adopt strict and specific rules governing how the amounts of funding in each sub-zone are calculated under Path 3, self-certification, to ensure amounts are cost justified should also be rejected. The FCC has already addressed this issue:

We disagree with those commenters that assert that permitting carriers to self-certify to a disaggregation plan creates too great an opportunity for the incumbent carrier to manipulate the disaggregation and targeting of support in an anti-competitive manner. We note that the states will play a significant role in the disaggregation and targeting of support. Under the plan we adopt here, a self-certified plan is subject to complaint by interested parties before the appropriate regulatory authority on the grounds that it does not comply with the self-certification requirements, which we believe ensure that the disaggregation plan will not be anti-competitive. Moreover, the state or appropriate regulatory authority may require on its own motion at any time the disaggregation of support in a different manner. We believe that state oversight in the administration of the disaggregation scheme will safeguard against the anti-competitive manipulation of the disaggregation and targeting of support.¹⁶

¹⁵ 47 U.S.C. § 214(e).

¹⁶ *Fourteenth Report and Order, Twenty-Second Order on Reconsideration (Order), and Further Notice of Proposed Rulemaking (FNPRM), In the Matter of Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 96-45, 00-256, FCC 01-157, para. 152.

NTCA agrees with the Commission in that state commission oversight of carrier disaggregation plans will safeguard against anti-competitive manipulation.¹⁷

III. THE COMMISSION SHOULD GRANT THE PETITION FOR RECONSIDERATION/CLARIFICATION FILED BY THE COALITION OF RURAL TELEPHONE COMPANIES

NTCA supports CRTC's request that the Commission reconsider its rule that would use the customer's billing address as a surrogate for the locations where mobile service is used. NTCA also supports CRTC's request that the FCC consider and develop procedures for wireless and mobile applications that will lead to the identification of the proper level of targeting of universal service support dollars.

The procedures for service location and quantity of universal service support should have a rational connection to the services actually provided by the wireless carrier. Section 254(e) provides that support be used for the "provision, maintenance, and upgrading of facilities for services which the support is intended." The Commission cannot ensure that high cost support is used for its intended purpose if it permits this type of support on the basis of billing addresses that have no nexus to whether service is provided in high cost areas. It can also not enforce Section 254(k), which prohibits carriers from subsidizing competitive services with non-competitive services. The Commission should therefore consider and adopt rules with respect to wireless applications that will not lead to "gaming" opportunities.

¹⁷ Based on this same reasoning, the Commission should also reject CUSC's proposals concerning: (1) requiring USAC to publish on its website the boundaries of wire centers, sub-zones and total support for each location; (2) additional reporting requirements for ETCs and rural ILECs; and the elimination of the requirement that carriers obtain state certification that they are complying with section 254(e) of the Act. *Petition for Reconsideration filed by the Competitive Universal Service Coalition*, CC Docket Nos. 96-45 and 00-256. pp. 5-7.

A competitive eligible telecommunications carrier (CETC) should only receive sufficient support that is based on its own costs.¹⁸ As the Montana Telecommunications Association stated:

“it is still possible for a [CETC] to game the system effectively by ‘entering’ a service territory as an ETC using a combination of its own low cost facilities, where beneficial to the CETC, and resale of the incumbent’s retail services where facilities-based service is not cost effective. Thus, it is conceivable that a wireless carrier, for example, could obtain ETC status without incurring the costs, or providing the quality of service comparable to the incumbent, and yet obtain per-line support at the incumbent’s level. The incumbent’s per line support would represent costs far in excess of those associated with the CETC’s costs or service. The CETC effectively could receive a windfall...”¹⁹

Conversely, a rural competitor may be hindered if limited to support based upon the incumbent’s costs. At times the most economic and efficient way to respond to requests from neighboring communities to extend levels and quality of service into areas historically served by large companies is to overbuild. In these situations, because the incumbent’s plant and switching facilities is old and/or in ill repair, just purchasing the plant would not improve service. These companies have increased service offerings with newly constructed facilities but have been limited to support received by the ILEC.²⁰ In either case, the correct alternative would be a cost-based portability mechanism, “whereby universal service support to the CETC is attributed to the CETC’s per line disaggregated costs of providing universal service in its designated service territory.”²¹

¹⁸ See NTCA comments, CC Docket No. 96-45, FCC 00J-3, November 3, 2000, at 12.

¹⁹ Comments of the Montana Telecommunications Association (MTA), CC Docket No. 96-45, FCC 00J-3, November 3, 2000, at 3-4.

²⁰ See, generally, Comments of the Rural Independent Competitive Alliance, CC Docket No. 96-45, FCC 00J-3, November 3, 2000.

²¹ MTA comments, CC Docket No. 96-45, FCC 00J-3, November 3, 2000, at 4.

IV. CONCLUSION

Based on the above reasons the Commission should reject the petitions for reconsideration filed by the ICC and CUSC, and grant the petition for reconsideration and or clarification filed by CRTC.

Respectfully submitted,

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August 6, 2001

CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Reply Comments of the National Telephone Cooperative Association in CC Docket Nos. 96-45, and 00-256, FCC 01-157 was served on this 6th day of August 2001 by first-class, U.S. Mail, postage prepaid, to the following persons:

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